



Minnesota Housing eNews Alert

July 22, 2009

Neighborhood Stabilization Program Updates

A. Current Implementation Issues

Conditions Required Prior to the Disbursement of Funds

Subrecipients are reminded that the following are required prior to the approval of ANY disbursement requests.

1. Your environmental review process must be complete with a finding of no significance, evidenced by Minnesota Housing's execution of a Release of Funds approval, with the exception of properties or activities that are "exempt" from the process.
2. Your sample mortgage, note, repayment agreement, or covenants that you plan on using in the NSP transaction to enforce the affordability period must be submitted to and approved by Minnesota Housing.
 - o Only seven subrecipients have received approval of their affordability enforcement documents at this time. Subrecipients are urged to submit these sample documents as soon as possible. While we are reviewing documents quickly, we have found that it can take several weeks to get to final documents approved due to the number of revisions required.

The [June 11 NSP Update](#) alerted subrecipients to common problems we had seen in covenants regarding NSP resale restrictions. The other means to ensure continued affordability is for subrecipients to use "Recapture" provisions to obtain repayment of NSP funds. Sample documents we've reviewed revealed some common errors.

If your organization is planning on using Recapture to enforce continued affordability, consider these Recapture requirements when drafting your documents before submitting them to Minnesota Housing for review.

- First: In the event of a sale, the amount that is subject to recapture or repayment may not exceed the net proceeds. "Net proceeds" are the sales price minus superior loan repayment (other than the NSP funds) and closing costs. Subrecipients should review this requirement of the HOME regulations at 24 CFR Section 92.254 a.5.(ii)A for guidance in writing this limitation.
- Second: The document must provide for repayment not only when the property is sold, but also if it ceases to be the principal residence of the homeowner during the period of continued affordability.

Contingent/Non-Contingent Contracts

In the last couple weeks Minnesota Housing has learned of varied interpretations on how to approach the NSP requirements in the signing of purchase agreements. We have learned that some subrecipients specify the environmental review requirement and the appraisal requirement/discount as contingencies to the contract, others have established the offer subject to "financing", while others fail to list any contingencies.

Effective immediately, all purchase agreements must include:

- contingency language that includes the environmental approval requirement,
- the appraisal discount requirement (which must reference an appraisal produced within 60 days prior to a final offer on the property),
- and additional language that the contingent offer will become a final offer upon approval of the NSP financing. An alternative to this is for the appraisal, the environmental review and other NSP requirements be completed prior to any offer made on the property.

Subrecipients are required to incorporate these steps into their process or their buyer's process in the acquisition of properties to be used with NSP funds from Minnesota Housing.

B. Action Plan and NSP Program Manual changes:

On July 23, 2009, the Minnesota Housing Board adopted the following changes to the state's Neighborhood Stabilization Program (NSP 1) Action Plan and program manual. The revisions and technical corrections were presented by the Department of Housing and Urban Development (HUD) in their "Bridge" notice publication on June 19, 2009. These changes are retroactive to the September 29, 2008 effective date of the NSP1 program.

NSP Discount Requirement:

Reduce the minimum discount from current market appraised value from 5 percent to 1 percent for each individual residential property purchased. Eliminate the aggregate discount of 15% across the portfolio of properties acquired.

Program Income

1. Section 2301 (d)(4) of HERA, which established requirements for the disposition of revenue generated by NSP assisted activities, was repealed by the ARRA. As a result of this repeal, revenue generated from the use of NSP funds and received by a private individual or other entity that is not a subrecipient is not required to be returned as was required by section 2301(d)(4). Subrecipient shall have the same meaning as at the first sentence of 24 CFR 570.500(C). The term includes any non-profit organization or land bank receiving NSP funds from the subrecipient.
2. Program income received after July 30, 2013 is not required to be returned to HUD for deposit in the Treasury. However, program income received by subrecipients is still subject to CDBG requirements as long as it is directly generated from the use of NSP funds.

C. Subrecipients must comply with the additional requirements made part of the "Bridge" notice including but not limited to those highlighted below:

Valuation of low value properties

If the subrecipient determines that the anticipated value of a proposed acquisition is estimated at \$25,000 or less and the acquisition is voluntary, the current market appraised value of the property may be established by a valuation of the property that is based on a review of

available data and is made by a person the subrecipient determines is qualified to make the valuation.

Tenants' Rights

Subrecipients must document their efforts to ensure that the initial successor in interest in a foreclosed upon home or residential property (typically the lender) has provided bona fide tenants with the notice and other protections outlined in the American Recovery and Reinvestment Act of 2009. Subrecipients may assume the obligations of such initial successor in interest with respect to bona fide tenants. If subrecipients elect to assume such obligations, they are reminded that tenants displaced as a result of the NSP funded acquisition are entitled to the benefits outlined in 24 CFR 570.606. The use of NSP funds for acquisition of such property is subject to a determination by the subrecipient that the initial successor in interest complied with the requirements of the act.

D. The following changes from the "Bridge" notice were not incorporated into Minnesota Housing's NSP Action Plan:

Land bank operations

Section 2301 (c)(3)(c) of HERA was amended to permit NSP funds to be used to establish and operate land banks for homes and residential properties that have been foreclosed upon. Minnesota Housing did not adopt the use of NSP funds under the expanded definition of Land banks provided in the "Bridge" notice.

Homebuyer counseling

The October 6, 2008 notice indicated that rehabilitation may include counseling for those seeking to take part in the activity. Although HUD inadvertently omitted to clarify that housing counseling is an eligible activity delivery cost and is making a correction to incorporate homebuyer counseling as an eligible delivery cost under the NSP eligible uses, Minnesota Housing did not adopt this correction. Therefore, homebuyer counseling will not be an eligible delivery cost under NSP eligible uses.

Questions?

Contact Ruth Simmons at 651.297.5146 or ruth.simmons@state.mn.us.